IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 5 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KAMLESH MANIKANT NAGORI

Appearance:

Ms.Harsha Devani, learned A.P.P. for Petitioner

NOTICE SERVED for Respondent No. 1, BUT ABSENT

ABETTED for Respondent No. 2, 3

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 03/05/2001

ORAL JUDGEMENT

1. By means of filing this appeal under Sec. 378 of the Code of Criminal Procedure, 1973, State of Gujarat has challenged the judgment and order dated 30.9.86

rendered by the learned Metropolitan Magistrate, Court no. 11, Ahmedabad in Criminal Case no. 262 of 1986 acquitting the respondents under Secs. 379, 465,471 and 114 of Indian Penal Code.

2. The complainant Sanjaykumar Kaneshchandra Surana gave complaint on 21.5.84 that his father is the owner of one scooter bearing registration no. GUE 6295. On 18.5.84, the complainant was at his shop from 10.30 a.m. to 5.30 p.m. and returned to him home. He along with his niece went to a movie in the last show and he parked the scooter in the lane of Vaghbakri tea shop. His scooter was locked. At about 12.30 a.m., after the show was over, when the complainant came to take his scooter, he could not find the same and therefore he informed his father who came from Ratlam along with the related papers and thereafter he gave the complaint. In the said complaint, the complainant has not given anyone's name.

3. The said complaint was filed with the Karanj police station on 21.5.84. The Investigation Officer, after registering the case, filed the chargesheet against the present three respondents in the court of learned metropolitan magistrate court no. 11 on 21.8.86. On filing the chargesheet in the court of Metropolitan Magistrate court no. 11, it was given Criminal Case no. 262/86.

4. The charge against the accused was framed at Exh. 3 by the learned Metropolitan Magistrate court no. 11 on 3.9.86. All the accused denied the allegations made in the chargesheet and claimed to be tried. Accordingly, the prosecution has examined witness (1) Sanjaykumar Kaneshchandra Surana p.w.1 exh. 5, (2) witness Jagdishbhai Khodabhai p.w. 2 exh. 7 and (3) Dashrathbhai Ramjibhai p.w. 3 exh. 9. The prosecution has also produced documentary evidence such as complaint, panchanama, R.T.O. book etc.

5. After recording the evidence of the prosecution witnesses, learned Metropolitan Magistrate questioned the accused under Sec. 313 of the Code of Criminal Procedure. In their further statement, all the accused denied the case of the prosecution.

6. On appreciation of evidence laid down by the prosecution, the learned Metropolitan Magistrate held that the complainant by name Sanjaykumar Kaneshchandra p.w. 1 exh. 5 is a formal witness as he took the scooter of his father on the day of the incident to see the movie. So far as Jagdishbhai Khodabhai p.w. exh. 7

is concerned, the learned trial court judge has observed in his judgment that when he was called in the police station, one Dashrathbhai Ramjibhai was already sitting there. He was called to sign the panchanama of scooter bearing registration no. G.R.S.9031. At that time another panch was also present. The learned Judge has further held that the panch is a police witness who always remains in the police station. He was called for checking of gold ornaments called Rani. There was another man with him, whom he does not know. He does not know Rashmikant Rambhai Patel.

7. The learned trial judge also observed in his judgment that p.w. 3 exh. 9 who has produced the registration book at exh. 10 of scooter no. G.R.J.9031 wherein the name is mentioned of Madanlal Narandas, whereas the complainant Sanjaykumar exh. 5 states that scooter no. G.U.E.6295 is in the name of his father. The learned trial judge, in his judgment has observed that the registration book produced at exh. 10 does not reveal the name of his father but it reveals the name of some other person. Therefore, the registration book produced at exh. 10 is of scooter no. G.R.J.9031 which is not the scooter of the complainant. Therefore, there is nothing to do with the registration book. The writing at exh. 12 also reveals the scooter no. G.U.J.9031 for which the registration book is produced. Thus the learned judge came to the conclusion that the registration book exh. 12 shows the scooter no. G.R.J. 9031 whereas the complainant's scooter no. G.U.E.6295, which are different and that would not establish any link of the respondent with the alleged offence. Accordingly, the respondent was acquitted and the scooter was returned to Dashrathbhai Ramjibhai Patel, from whom it was seized.

8. Initially, the acquittal appeal was filed against all the three respondents (accused). From the papers of High Court, it appears that Hon'ble Mr. Justice S.D.Dave (as he then was) by passing order on 26.3.96 abetted the appeal against respondents no. 2 & 3 as they had expired during the pendency of appeal and accordingly the appeal is pending against respondent no. 1.

9. Ms.Harsha Devani, learned A.P.P. for the state, after taking me through the entire record, pleaded that the chasis number and engine number of scooter no. G.U.R.6295 and scooter no. G.R.J.9031 are same. Therefore, there is a reason to believe that the scooter of the complainant was stolen on 18.5.84 for which the complaint was given on 21.5.84 which is at exh. 6. It was further pleaded that respondent no. 2 sold a scooter

to Dashrathbhai while respondent no. 3 had committed theft of scooter no. G.U.E.6295 and gave it to respondent no. 2. Respondent no.1 was working as an Agent with RTO and taking advantage of this, he got bogus registration book of Bhopal RTO which was given Registration No. CPI 4250 and this was used as genuine and thereafter that was got changed at RTO Bharuch giving Registration no. G.R.J.9031. The learned A.P.P. further pleaded that the trial court has not given sufficient opportunity to the prosecution to call witnesses from Bhopal and Bharuch. Therefore, a great miscarriage of justice has caused to the prosecution. Under the circumstances, the order of acquittal be set aside and the respondent be punished accordingly.

10. From the record, it appears that the opponent no. 1 was served but neither he nor his advocate has appeared in this matter.

11. I have gone through the sworn testimony of the witnesses who has been examined on behalf of the prosecution. It is true that the complainant gave complaint at exh. 6 to the effect that his scooter which was in the name of his father bearing registration no. G.U.E.6295 is stolen on the day of the incident. In his complaint, neither he has given the name of the respondent nor has shown any doubt on either of them. It is pertinent to note that the theft of the scooter took place on 18.5.84 and the respondent no. 1 & 2 were arrested on 27.3.85 and the respondent no. 3 was arrested on 12.4.86 i.e. after about one year and two years respectively from the date of the incident. The respondents no. 2 & 3 were released on bail but the respondent no. 1 was not released on bail. From where and under what circumstances, they were arrested is not found on record. The Investigating Officer was not present on the day of recording of the evidence when court rejected the application for time and closed the evidence. Therefore, I have to come to the conclusion regarding the alleged theft by respondents no. 1 to 3 by reappreciating the depositions on record.

12. As discussed above, the complainant's father was the owner of scooter no. G.U.E.6295. He is merely a formal witness and he has not shown any finger against either of the respondents. p.w. 2 panch at exh. 7 says that he was called on 7.4.86 i.e. almost after 2 years from the date of incident which is 18.5.84 where one Dashrathbhai produced one scooter no. G.R.J.9031. The panchanama was drawn and he has signed the same. In the cross-examination of the witness, he clearly admits that

he went to the police station to identify one gold piece (rani). He is a regular visitor of crime branch. Therefore, the learned trial court has rightly stamped him as a police witness. So far as p.w. 3 is concerned, he has stated that he is having one shop at Mehsana. Next to his shop, there is one shop by name Lakshmi Auto Centre. He stated that he purchased one scooter from respondent no. 1 for Rs. 11,400/- bearing registration no.G.R.J.9031, the writing to that effect and the copy of the registration book are produced at exh. 12 and 10 respectively. If we peruse the original registration book produced at exh. 10, it leads me to come to the conclusion that it appears that it is a original (as such duplicate) R.T.O. book. Unless the prosecution has examined witness from Bharuch R.T.O. office to come to a conclusion that it is a bogus one. On page no. 10 & 11 of R.T.O.book also, there is a Government Seal of Bharuch R.T.O. The vehicle is shown in the name of Madanlal Nagindas Patel. I also find contradiction in the deposition of p.w. no. 3. At exh. 11, there is original writing produced dated 22.9.86 between respondent no. 2 and p.w. 3. If we peruse the writing, it appears that the vehicle stands in the name of Sri M.N.Patel, however, the vehicle is in possession of respondent no. 2. Against the aforesaid contradiction, if we peruse the deposition of p.w. 3, he says that one Somabhai of Lakshmi Auto Centre is shown as the person from whom he has purchased the scooter bearing registration no. G.R.J.9031.

13. So far as the argument advanced by learned A.P.P. to the effect that the learned trial judge did not give ample opportunity to call the witnesses from Bhopal and Bharuch, and closed the evidence, it may be noted that if that was the case then the prosecution should have given an application to go to higher forum. The grievance made by the learned A.P.P. at this stage has no merit and therefore rejected.

14. In the case of REHMAN V/S THE STATE OF U.P. 1972 CR.L.J.23 (A.I.R.1972 S.C.110), the Hon'ble Supreme Court has held that the circumstances forming evidence must be conclusively established and even when so established, they must form such a complete chain that it is not only consistent with the guilt, but is inconsistent with any reasonable hypothesis of innocence.

15. I have gone through the reasoning made by the learned trial court judge. The reasons which are given by the learned trial judge in the impugned judgment for acquitting the respondents are not erroneous and do not

call for interference by this court in the present appeal.

16. This is an acquittal appeal in which court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be sage to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Judge. As I am in agreement with the view expressed by the learned Judge, I do not think it necessary either to reiterate the evidence of the prosecution witnesses or to restate the reasons for acquittal given by the learned Judge, and in my view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) GIRIJA NANDINI DEVI & ORS. V/S BIJENDRA NARAIN CHAUDHARY A.I.R. 1967 S.C. 1124 AND (2) STATE OF KARNATAKA V/S HEMA REDDY AND ANOTHER A.I.R. 1981 S.C. 1417. On over all appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondents. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondents and the learned Addl.Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convince me to take the view contrary to the one already taken by the learned Judge. In view of the aforesaid discussion, the appeal deserves to be rejected.

17. For the foregoing reasons, I do not see any merits in the appeal. The appeal, therefore, fails and is dismissed. Bail bonds stand cancelled.

(SHARAD D DAVE, J)

/srilatha/